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**52nd Street Hotel Associates d/b/a Novotel New York Hotel and New York Hotel and Motel Trades Council, AFL-CIO. Case 2-CA-29660**

December 16, 1996

**DECISION AND ORDER**

BY CHAIRMAN GOULD AND MEMBERS BROWNING  
AND FOX

Pursuant to a charge filed on August 28, 1996, the General Counsel of the National Labor Relations Board issued a complaint on October 17, 1996, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 2-RC-21475. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On November 19, 1996, the General Counsel filed a Motion for Summary Judgment. On November 21, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On December 3, 1996, the Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

In its answer, the Respondent admits its refusal to bargain, but attacks the validity of the certification on the basis of its objections to the election in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

Accordingly, we grant the Motion for Summary Judgment.<sup>1</sup>

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent, a corporation, with an office and place of business located at 226 West 52nd Street, New York, New York, has been engaged in the business of the operation of a hotel providing food and lodging. Annually, the Respondent in conducting its business operations described above, derives gross revenues in excess of \$500,000 and purchases and receives at its New York, New York facility, products, goods, and materials valued at more than \$5000 directly from points outside the State of New York. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

**A. The Certification**

Following the election held December 9, 1994, the Union was certified on July 8, 1996,<sup>2</sup> as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time employees of the Employer employed at its facility at 226 West 52nd Street, New York, New York, including housekeeping attendants, on-call housekeeping attendants who worked an average of at least 4 hours per week during the preceding calendar quarter, lobby service agents, lead lobby service agents, guest service agents, guest service agent interns, lead guest service agent, front office coordinator, guest relations coordinator, night auditor, night managers, commis de cuisine, first commis de cuisine, tournant, utility persons, cashier/hostesses, buffet persons, banquet housemen, chef de rang, commis de rang, mini bar attendant, bartenders, general maintenance mechanics and lead engineers, but EXCLUDING all Accounting Department employees, all Sales Department employees, all managerial employees (including General Manager, Director of Operations, Food and Beverage Director, Human Resources Director, Engineering and Housekeeping Director, Front Office and Guest Services Director, Chef de Cuisine,

<sup>1</sup> Member Fox did not participate in the underlying representation proceeding. However, she agrees with her colleagues that the Respondent has raised no new issues in this "technical" 8(a)(5) proceeding warranting a hearing.

<sup>2</sup> 321 NLRB No. 93.

International General Manager Trainee, Director of Sales, National Director of Sales, Store Room Manager, Executive Secretary), house officers, on-call housekeeping attendants who did not work an average of at least 4 hours per week during the preceding calendar quarter, all other interns, and guards, professional employees and supervisors as defined in the Act. The Union continues to be the exclusive representative under Section 9(a) of the Act.

### B. Refusal to Bargain

Since July 18, 1996, the Union has requested the Respondent to bargain, and since August 26, 1996, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

### CONCLUSION OF LAW

By refusing on and after August 26, 1996, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

### REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

### ORDER

The National Labor Relations Board orders that the Respondent, 52nd Street Hotel Associates d/b/a Novotel New York Hotel, New York, New York, its officers, agents, successors, and assigns, shall

#### 1. Cease and desist from

(a) Refusing to bargain with New York Hotel and Motel Trades Council, AFL-CIO, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time employees of the Employer employed at its facility at 226 West 52nd Street, New York, New York, including housekeeping attendants, on-call housekeeping attendants who worked an average of at least 4 hours per week during the preceding calendar quarter, lobby service agents, lead lobby service agents, guest service agents, guest service agent interns, lead guest service agent, front office coordinator, guest relations coordinator, night auditor, night managers, commis de cuisine, first commis de cuisine, tournant, utility persons, cashier/hostesses, buffet persons, banquet housemen, chef de rang, commis de rang, mini bar attendant, bartenders, general maintenance mechanics and lead engineers, but EXCLUDING all Accounting Department employees, all Sales Department employees, all managerial employees (including General Manager, Director of Operations, Food and Beverage Director, Human Resources Director, Engineering and Housekeeping Director, Front Office and Guest Services Director, Chef de Cuisine, International General Manager Trainee, Director of Sales, National Director of Sales, Store Room Manager, Executive Secretary), house officers, on-call housekeeping attendants who did not work an average of at least 4 hours per week during the preceding calendar quarter, all other interns, and guards, professional employees and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in New York, New York, copies of the attached notice marked "Appendix."<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 2 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other

<sup>3</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 28, 1996.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. December 16, 1996

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| William B. Gould IV, | Chairman |
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| Margaret A. Browning, | Member |
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| Sarah M. Fox, | Member |
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(SEAL) NATIONAL LABOR RELATIONS BOARD

#### APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with New York Hotel and Motel Trades Council, AFL-CIO as the exclusive representative of our employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time employees employed at our facility at 226 West 52nd Street, New York, New York, including housekeeping attendants, on-call housekeeping attendants who worked an average of at least 4 hours per week during the preceding calendar quarter, lobby service agents, lead lobby service agents, guest service agents, guest service agent interns, lead guest service agent, front office coordinator, guest relations coordinator, night auditor, night managers, commis de cuisine, first commis de cuisine, tournant, utility persons, cashier/hostesses, buffet persons, banquet housemen, chef de rang, commis de rang, mini bar attendant, bartenders, general maintenance mechanics and lead engineers, but EXCLUDING all Accounting Department employees, all Sales Department employees, all managerial employees (including General Manager, Director of Operations, Food and Beverage Director, Human Resources Director, Engineering and Housekeeping Director, Front Office and Guest Services Director, Chef de Cuisine, International General Manager Trainee, Director of Sales, National Director of Sales, Store Room Manager, Executive Secretary), house officers, on-call housekeeping attendants who did not work an average of at least 4 hours per week during the preceding calendar quarter, all other interns, and guards, professional employees and supervisors as defined in the Act.

52 STREET HOTEL ASSOCIATES D/B/A  
NOVOTEL NEW YORK HOTEL